

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
THIRD DIVISION**

Allan D. Hardy,

Civil No. 05-652 JMR/AJB

Plaintiff,

v.

REPORT AND RECOMMENDATION

St. Paul Probation, et al.,

Defendants.

This matter is before the Court, Magistrate Judge Arthur J. Boylan, on plaintiff Allan Hardy's "Motion for Summary Judgment in my Favor." [Docket No. 16]. The action has been referred to the United States Magistrate Judge for report and recommendation pursuant to 28 U.S.C. § 636 and Local Rule 72.1.

Plaintiff filed a complaint for violation of civil rights under 42 U.S.C. §1983 on March 30, 2005. He alleged that he was improperly assessed restitution with respect to a laptop computer after he was convicted in Minnesota state court on a charge of possession of stolen property. Upon initial screening the Magistrate Judge recommended that plaintiff's application for permission to proceed without prepayment of fees be denied and that the matter be dismissed without requiring a response from the defendant. The District Court issued an order and entered judgment dismissing the complaint on May 16, 2005. On June 1, 2005, plaintiff filed a notice of appeal to the Eighth Circuit.

The present motion for summary judgment was filed in district court on August 19, 2005, long after judgment was entered by the district court and the Eight Circuit appeal was commenced. Under these circumstances the district court does not have jurisdiction to consider the

matter and the motion is properly dismissed.

Based upon the foregoing discussion, the Magistrate Judge makes the following:

RECOMMENDATION

It is **hereby recommended** that plaintiff Allan Hardy's Motion for Summary Judgment in my Favor be **denied** [Docket No. 16].

Dated: January 31, 2006

s/ Arthur J. Boylan
ARTHUR J. BOYLAN
United States Magistrate Judge

Pursuant to Local Rule 72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties, written objections which specifically identify the portions of the Report to which objections are made and the bases for each objection. This Report and Recommendation does not constitute an order or judgment from the District Court and it is therefore not directly appealable to the Circuit Court of Appeals. Written objections must be filed with the Court before February 13 , 2006.